

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 3744

In re

Patent Application of

Jony Zangari et al.

Serial No. 10/552,205

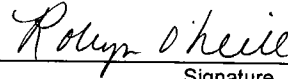
Filed: October 6, 2005

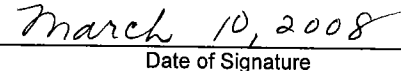
Confirmation No.: 6337

Examiner: James Thomson, Attorney Advisor

"MODULAR REFRIGERATION UNIT"

I, Robyn O'Neill, hereby certify that this correspondence is being filed electronically via EFS with the US Patent and Trademark Office, on the date of my signature.


Signature


Date of Signature

**REQUEST FOR RECONSIDERATION OF PETITION FOR FILING WHEN THE INVENTOR
REFUSES TO SIGN OR CANNOT BE REACHED UNDER 37 C.F.R. §1.47(a)**

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Request responds to the Decision from the U.S. Patent and Trademark Office dated January 9, 2008, regarding Applicants' petition under 37 C.F.R. §1.47(a). Charge or credit Account 13-3080 with any shortage or overpayment of any fees required for this communication.

Applicants respectfully request that the Attorney Advisor consider the following remarks.

Remarks

Applicants respectfully request that the Attorney Advisor reconsider and enter Applicants' petition under 37 C.F.R. §1.47, as previously filed on November 19, 2007,

A petition for when an inventor refuses to sign a Declaration under 37 C.F.R. §1.63 requires (1) a Declaration executed by the remaining inventors on their behalf and on behalf of the

nonsigning inventor, (2) a petition including proof of the pertinent facts, (3) the petition fee under 37 C.F.R. §1.17(g), and (4) the last known address of the non-signing inventor. 37 C.F.R. §1.47(a).

Applicants appreciate the Attorney Advisor's indication that Applicants have satisfied items (3) and (4), listed above.

The Attorney Advisor rejected Applicants' petition under 37 C.F.R. §1.47(a) for failure to provide a Declaration executed by the remaining inventors on their behalf and on behalf of the nonsigning inventor (i.e., item (1)). Applicants submit with this Response the complete Declaration, including two first pages and two second pages of the Declaration. As such, Applicants respectfully request withdrawal of this rejection.

The Attorney Advisor also rejected Applicants' petition under 37 C.F.R. §1.47(a) for failing to include documentary evidence in support of Mr. Hernandez' declaration that the nonsigning inventor, Mr. Raul Gutierrez, received a complete copy of the application papers (i.e., item (2)). Applicants respectfully disagree with the Attorney Advisor's rejection of Applicants' petition on these grounds. The Manual of Patent Examining Procedure ("MPEP") states that a "copy of the application papers should be sent to the last known address of the nonsigning inventor[.]" and that "the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." *M.P.E.P.* §409.03(d)(II). When the nonsigning inventor expresses his refusal to sign the application papers orally, "that fact along with the time and place of the refusal must be stated in the statement of facts." *Id.* Furthermore, the MPEP states that "[i]f there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted." *Id.*

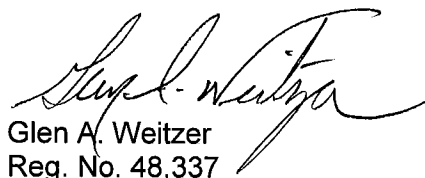
In support of the petition under 37 C.F.R. §1.47(a), Mr. Hernandez declared that a complete copy of the application on October 6, 2005 was provided to the nonsigning inventor, Mr. Gutierrez. See *Declaration of Aaron Hernandez, paragraphs 2, 6, and 7*. Mr. Hernandez' also declared the circumstances in which he presented the application and the Declaration to Mr. Gutierrez. See *id., paragraph 6*. Specifically, Mr. Hernandez declared that he called Mr. Gutierrez at his home to request that he sign the Declaration, and to have the executed document returned to Mr. Hernandez. See *id.* In addition, Mr. Gutierrez was provided with the entire file for his review, as requested. See *id.* Furthermore, Mr. Hernandez declared that Mr.

Gutierrez, via telephone, orally refused to sign the Declaration on October 7, 2005. *See id.*, paragraph 8.

Applicants respectfully submit that they have satisfied their burden of filing a petition including proof of the pertinent facts. Applicants have declared, via the Declaration of Aaron Hernandez, that Mr. Gutierrez orally refused to sign the application papers, and further declared the circumstances and pertinent facts surrounding Mr. Gutierrez' refusal to sign. The MPEP does not set forth a requirement that documentary evidence of delivery of the application papers to Mr. Gutierrez **must** be submitted with the petition under 37 C.F.R. §1.47. On the contrary, submission of documentary evidence is merely optional. *See M.P.E.P. §409.03(d)(II)*. The MPEP only suggests that **if** there is documentary evidence that Mr. Raul Gutierrez received a complete copy of the application and the Declaration, "it **should** be submitted." *See id.*

Applicants have declared all facts upon which they concluded that Mr. Gutierrez refused to sign the Declaration and join them in the application. Via Applicants' petition under 37 C.F.R. §1.47(a) and the Declaration of Aaron Hernandez, Applicants have satisfied the requirements set forth in 37 C.F.R. §1.47(a). As such, Applicants request that the Attorney Advisor's rejections be withdrawn, and that the Attorney Advisor reconsider and grant Applicants' petition under 37 C.F.R. §1.47(a).

Respectfully submitted,



Glen A. Weitzer
Reg. No. 48,337

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Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108
414.271.6560